HHD-CV19-5059848-S	:	SUPERIOR COURT
KRISTA A. FESTA AND	:	
BRIAN D. FESTA PPA ANDREW	:	
FESTA	:	JUDICIAL DISTRICT OF
Plaintiffs	:	HARTFORD
	:	
v.	:	AT HARTFORD
	:	
STATE OF CONNECTICUT DEPT OF	:	
PUBLIC HEALTH	:	
Defendant	:	July 11, 2019

DEFENDANT'S MOTION TO DISMISS

Pursuant to sections 10-30 and 10-31 of the Connecticut Practice Book, the Defendant, State of Connecticut Department of Public Health, hereby moves this court to dismiss the Plaintiffs' "Amended Application for Temporary Ex Parte Injunction," Doc. 103, and "Amended Motion for Declaratory Judgment," Doc. 106 in their entirety.

As explained more fully in the accompanying memorandum of law in support of this motion: (1) plaintiffs failed to exhaust administrative remedies, (2) sovereign immunity precludes plaintiffs' claims, and (3) plaintiffs lack standing.

Accordingly, it is respectfully requested that this court GRANT the Defendant's Motion to Dismiss and enter judgment for the Defendant.

DEFENDANT
CONNECTICUT DEPARTMENT OF PUBLIC HEALTH

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ATTORNEY GENERAL

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CERTIFICATION

I hereby certify that the foregoing complies with the requirements of Practice Book§ 4-7 and a copy was mailed, U.S. Mail, postage prepaid, or electronically delivered pursuant to Practice Book § 10-13 to all counsel and pro se parties of record who have given written consent for electronic delivery, on the 11th day of July, 2019, as follows:

/s/ Darren P. Cunningham
Assistant Attorney General

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' "AMENDED MOTION FOR DECLARATORY JUDGMENT"

Largely on the basis of a single state regulation, the Plaintiffs ask this court to, *inter alia*, declare that the Defendant State of Connecticut Department of Public Health ("DPH") has violated Reg. Con. State Agencies § 10-204a-4(c), order the Defendant to remove the confidential immunization information from its website "and any other publicly-available sources" and enjoin DPH "from releasing any further immunization information in violation of Reg. Conn. State Agencies § 10-204a-4(c)." Doc. 106 at 9.[1]

As explained more fully below, the plaintiffs' application for injunctive relief, Doc. 103, and amended motion for a declaratory judgment, Doc. 106, must be dismissed because: (1) plaintiffs failed to exhaust administrative remedies, (2) sovereign immunity precludes plaintiffs' claims, and (3) plaintiffs lack standing.

The Defendant respectfully submits this memorandum of law in support of its motion to dismiss of this same date.

[1] On or about June 4, 2019 the plaintiffs filed a motion for a declaratory injunction. Doc. 109. On June 26 the plaintiffs filed an "Amended Motion for Declaratory Judgment." Doc. 106. The plaintiffs have also filed an amended application for a temporary injunction based on the same claims. *See* Doc. 103 that will be heard by this court on July 15, 2019. *See* Doc. 105. The court denied plaintiffs' motion for all motions to be heard on July 15. *See* Doc. 108.86.

Introduction

Plaintiffs' request for relief from this court is rooted in the Commissioner of Public Health's (hereafter "Commissioner") recent decision to make public on the DPH website the data on immunization rates in Connecticut's schools. Doc. 106 at 3. The Commissioner's decision "comes amid a national measles outbreak." Doc. 106 at Exhibit C, page 1/5.

The General Assembly has vested the Commissioner of Public Health with the authority to "employ the most efficient and practical means for the prevention and suppression of disease…" Connecticut General Statute § 19a-2a. Among the powers and duties of the Commissioner is "with the health authorities of this and other states, secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them." Connecticut General Statute § 19a-2a(8). The critical importance of immunization to public health and the responsibility of the Commissioner in this area is reflected in the comprehensive immunization program that the Commissioner is required to implement as set forth in Connecticut General Statute § 19a -7f including the duty to "[p]rovide vaccine at no cost to health care providers in Connecticut to administer to children so that cost of vaccine will not be a barrier to age-appropriate vaccination in this state."

On or about May 31 the pro se Plaintiffs[2] filed an application for a temporary ex parte injunction requesting, *inter alia*, that this court declare the Commissioner's actions illegal and enjoin the Defendant "from continuing to make publicly available confidential immunization information … and from making publicly available any other such confidential immunization information." Doc. 100.31 at 1.

[2] On July 8 counsel appeared for the plaintiffs.

Subsequently, plaintiffs also requested a declaratory judgment finding that the Defendants violated Reg. Conn. State Agencies § 10-204a-4(c) and ordering the Defendants to, *inter alia*, remove "confidential immunization information from their website and any other publicly-available sources" and enjoin the Defendants from releasing any further immunization information "in violation of Reg. Conn. State Agencies § 10-204a-4(c)." Doc. 106.

Plaintiffs' allege that they are parents of a seven year old male student at Meliora Academy in Meriden, Connecticut ("MA") and that their son – who they have identified -- has "utilized a religious exemption from mandatory immunization in accordance with Conn. Gen. Stat. § 10-204." Doc. 106 at 1-2.

Plaintiffs' amended motion for a declaratory judgment sounds in five counts. Count one alleges that by publishing the vaccination data the defendant has violated Reg. Conn. State Agencies § 10-204a-4(c). Counts two through four allege that the publication of this information has violated the plaintiffs' equal protection rights under the federal and state constitutions. Count five alleges that the Defendant has caused the plaintiffs' mental and emotional distress.

The Plaintiffs do not allege that at any time the defendant named A.F. or published his individual vaccination status. The plaintiffs also do not allege that they received any threats directed at them personally by third parties prior to the filing of their current legal actions in which they identified their son and his claimed exemption from immunization. Additionally, the plaintiffs allege that they received negative comments directed at them only after the filing of these actions. Doc. 106 at 6-7.

Argument

I. Plaintiffs Have Failed to Exhaust their Administrative Remedies and Therefore Lack Standing to Bring this Action (Motion for Declaratory Judgment -- All Counts)

Connecticut Practice Book Section 10-30 provides, in pertinent part, that "any defendant, wishing to contest the court's jurisdiction, may do so … by filing a motion to dismiss …." Conn. P.B. § 10-30. "The motion to dismiss shall be used to assert... lack of jurisdiction over the subject matter..." *Id.* §10-31.

As explained above, plaintiffs seek a declaration that the Defendant has violated a state regulation. Doc. 106 at 9. Plaintiffs also seek removal from the DPH website "confidential immunization information" and an injunction barring DPH from "releasing any further immunization information in violation of Reg. Conn. State Agencies § 10-204a-4(c)." *Id.*

It is well settled law that before a Superior Court has jurisdiction to act in a matter, a plaintiff must exhaust his or her administrative remedies. *Stepney, LLC v. Fairfield*, 263 Conn 558, 563 (2003). Since the exhaustion doctrine implicates the Court's subject matter jurisdiction, a Court must decide as a threshold matter whether that doctrine requires dismissal of the plaintiff's cause of action. *Id.*

The primary purpose of the doctrine of exhaustion of administrative "is to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions." *Id.* at 564-65. Importantly, the exhaustion doctrine relieves the courts of the burden of deciding questions prematurely that, if entrusted to an agency, may receive a satisfactory disposition that would avoid the need for judicial review. *Id.*

The exhaustion doctrine also "recognizes the notion, grounded in deference to [the

legislature's] delegation of authority to coordinate branches of Government, that agencies, not the court, ought to have primary responsibility for the programs that [the legislature] has charged them to administer. . . ." *Id.* Accordingly, the exhaustion doctrine serves two functions: "it protects the courts from becoming unnecessarily burdened with administrative appeals and it ensures the integrity of the agency's role in administering its statutory responsibilities." *Id.* (Citations omitted; internal quotations marks omitted.) (holding that the trial court improperly exercised jurisdiction over the plaintiff's action because the plaintiff failed to exhaust its administrative remedies.); see also *Johnson v. Statewide Grievance Committee*, 248 Conn. 87 (1999) (upholding the trial court's dismissal of the plaintiff's action seeking to enjoin the defendant from taking any further action on a grievance complaint that had been filed against him based on the plaintiff's failure to exhaust his administrative remedies.); *Pet v. Department of Health Services*, 207 Conn. 346 (1988) (holding that the trial court improperly granted injunctive relief enjoining the defendants from proceeding with certain disciplinary action against the plaintiff's physician license because the plaintiff failed to exhaust his administrative remedies.)

In Connecticut, a trial court lacks subject matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless that remedy has been sought in the administrative forum. *Levine v. Sterling*, 300 Conn. 521, 528 (2011). It has been frequently held that "where a statute has established a procedure to redress a particular wrong a person must follow the specified remedy and may not institute a proceeding that might have been permissible in the absence of such a statutory procedure." *Stepney, LLC v. Fairfield*, supra, 263 Conn. at 564-65. In the absence of exhaustion of that remedy, the action must be dismissed. *Levine v. Sterling*, supra, 300 Conn. 528.

Under the exhaustion doctrine, a plaintiff's preference for a particular remedy does not determine the adequacy of an administrative remedy, and an administrative remedy need not comport with a plaintiff's opinion of what a "perfect remedy" would be in order to be adequate. *River Bend Assocs., Inc. v. Simsbury Water Pollution Control Auth.*, 262 Conn. 84, 101 (2002).

The exhaustion doctrine applies to claims for declaratory relief, which the plaintiffs seek here. *See River Bend Assocs., Inc. v. Simsbury Water Pollution Control Auth.*, supra, 262 Conn. at 105-06; *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 98 (2010); *Pet v. Department of Health Servs.*, supra, 207 Conn. at 346. While declaratory judgment actions are governed by Conn. Gen. Stat. § 52-99, the Connecticut Supreme Court has definitively held that this statute does not authorize the bypassing of available administrative remedies. "[Section] 52–29, granting declaratory judgment jurisdiction to the Superior Court, does not qualify as the type of separate statutory authorization that allows for a complete bypassing of an administrative agency with undeniable jurisdiction over the subject matter...." *River Bend Assocs., Inc. v. Simsbury Water Pollution Control Auth.*, supra, 262 Conn. at 105 (internal quotation marks and citations omitted).

Conn. Gen. Stat. § 4–176(a) provides in relevant part that "[a]ny person may petition an agency ... for a declaratory ruling as to ... the applicability to specified circumstances of a provision of the general statutes," while Conn. Gen. Stat. § 4-166(11) establishes that the plaintiffs here would clearly fall within the statute's definition of "person." An aggrieved party can appeal from a declaratory ruling to the Superior Court pursuant to General Statutes § 4–183. *See* General Statutes §§ 4–166(3) and 4–176(h). In addition, if an agency declines to issue a declaratory ruling, the person who requested the ruling may bring a declaratory judgment action pursuant to General Statutes § 4–175(a).

The Connecticut Supreme Court repeatedly has held that when a plaintiff can obtain relief from an administrative agency by requesting a declaratory ruling pursuant to Conn. Gen. Stat. § 4–176, the failure to exhaust that remedy deprives the trial court of subject matter jurisdiction over an action challenging the legality of the agency's action. *See Republican Party of Connecticut v. Merrill,* 307 Conn. 470, 478-79 (2012); *Polymer Resources, Ltd. v. Keeney,* 227 Conn. 545, 557–58 (1993) (the plaintiff's claim for injunctive relief was barred by exhaustion doctrine when the plaintiff failed to seek declaratory ruling from commissioner of department of environmental protection pursuant to § 4–176); *Housing Authority v. Papandrea,* 222 Conn. 414, 422 n. 6 (1992) (principle that "procedures set forth in § 4–176 must be exhausted before an action challenging the applicability of a regulation may be brought in the Superior Court applies with equal force to the plaintiff's challenge ... to the commissioner's statutory authority" to engage in challenged conduct); *Connecticut Mobile Home Assn., Inc. v. Jensen's, Inc.,* 178 Conn. 586, 588–89 (1979) (declaratory judgment action seeking determination that certain lease provisions violated state statute was barred by exhaustion doctrine when the plaintiff failed to seek declaratory ruling from real estate commission pursuant to § 4–176, which confers on state agencies power to interpret statutes and regulations); see also *Liberty Mobile Home Sales, Inc. v. Cassidy,* 6 Conn. App. 723, 726 (1986) (the plaintiff's declaratory judgment actions were barred by exhaustion doctrine when it failed to seek declaratory rulings on issue from department of consumer protection pursuant to § 4–176).

Here, the plaintiffs did not file a request for declaratory ruling with DPH, an "agency" within the meaning of Conn. Gen. Stat. § 4-166(1). There can be no dispute that DPH has jurisdiction over the regulation at the heart of plaintiffs' claims, Reg. Conn. State Agencies § 10-204a-4, and that plaintiffs challenge. The complaint explicitly seeks a declaration from the Court

as to the requirement of that regulation as it applies to the specified circumstances raised here, DPH's authority to make public the data at issue here. The complaint also effectively requests that this court declare that the term "confidential" – an undefined term -- as used in the regulation deprives the Commissioner of the ability to make public aggregate data which on its face does not disclose any personally identifiable information.

The plaintiffs' failure to seek such a declaratory ruling prior to commencing this action deprives this Court of subject matter jurisdiction. The Connecticut Supreme Court has expressly required plaintiffs in situations such as here to exhaust administrative remedies before the court has jurisdiction to entertain a declaratory judgment action on plaintiffs' claims. *Conn. Ass'n. of Boards of Educ. v. Shedd*, 197 Conn. 554, 560-563 (1985)(explaining that a plaintiff who has failed to exhaust their administrative remedies lacks standing on all claims).

Nor does the fact that the Commissioner has taken a position or positions on issues involving the application and/or interpretation of state law excuse exhaustion of administrative remedies as futile. "It is futile to seek a remedy only when such action *could not* result in a favorable decision and *invariably* would result in fu1iher judicial proceedings." *Simko v. Ervin*, 234 Conn. 498, 507(1995) (Emphasis added; internal quotation marks omitted). In *Housing Authority of East Hartford v. Papandrea*, 222 Conn. 414, 430 (1992), the plaintiff commenced an action for injunctive relief against the state housing commissioner to enjoin him from operating a voucher program in East Hartford. The defendant filed a motion to dismiss, claiming that the plaintiff was required to exhaust its administrative remedies prior to filing this action. The trial court denied the motion to dismiss finding that exhaustion was not required because a letter from the Commissioner, indicating how he would decide the plaintiff's challenge to the voucher program, constituted the Commissioner's decision on the matter rendering further administrative review futile. On appeal, the Supreme Court rejected the plaintiff's claim of futility, finding that the Commissioner's letter

setting forth his position "*did not* relieve the plaintiff of its obligation to pursue its administrative remedies" as the plaintiff in such a proceeding could "persuade the Commissioner that his position was legally incorrect." (Emphasis added.) *Id*. at 432. *See* also *Peruta v. Comm'r. of Pub. Safety*, 128 Conn. App. 777, 791-92 (2011) (even if agency routinely enforces an adverse interpretation of statute at issue does not render futile the available administrative remedy); *Polymer Resources, Ltd. v. Keeney*, 227 Conn. 545, 561 (1993) (mere conclusory assertion that agency will not reconsider decision does not excuse compliance, on basis of futility, with exhaustion requirement); *Concerned Citizens of Sterling v. Sterling*, 204 Conn. 551, 557–60 (1987) (futility is more than mere allegation that administrative agency might not grant relief requested); *Neiman v. Yale Univ.*, 270 Conn. 244, 259 (2004) ("…utilizing administrative remedies is not futile for purposes of the futility exception even when the decision maker has indicated that it will rule against the grievant."); *Breiner v. State Dental Comm'n.*, 57 Conn. App. 700, 707 (2000). As our Appellate Court has observed, where an agency has previously taken a position on an issue, "[n]o doubt denial is the likeliest outcome [in the administrative proceeding], but that is not sufficient reason for waiving the requirement of exhaustion. Lightning may strike; and even if it doesn't, in denying relief the [agency] may give a statement of its reasons that is helpful to the [court] in considering the merits of the claim." *Metro. Dist. v. Comm'n on Human Rights & Opportunities*, 180 Conn. App. 478, 502, 184 A.3d 287, 303 (2018) (quoting *Greene* v. *Meese*, 875 F.2d 639, 641 (7th Cir. 1989)((Emphasis omitted.)).

Finally, the requirement that the plaintiffs exhaust administrative remedies is not mitigated because they have asserted constitutional claims. "Simply bringing a constitutional challenge to an agency's actions will not necessarily excuse a failure to follow an available

statutory appeal process … [D]irect adjudication even of constitutional claims is not warranted when the relief sought by a litigant 'might conceivably have been obtained through an alternative [statutory] procedure ... which [the litigant] has chosen to ignore." *Pet v. Dep't of Health Services*, supra 207 Conn. at 354 (citations omitted). See also *Johnson v. Dep't of Pub. Health*, 48 Conn. App. 102, 118-119 (1998). Due to the failure to exhaust an available administrative remedy, the plaintiffs' motion for declaratory judgment and injunctive relief must be dismissed.

II. Sovereign Immunity Precludes Plaintiffs' Actions

The doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. *Miller v. Egan*, 265 Conn. 301, 313 (2003), *St. George v. Gordon*, 264 Conn. 538, 548 (2003); *Martinez v. Dept. of Public Safety*. 263 Conn. 74, 78 (2003*); Federal Deposit Insurance Corporation v. Peabody. N.E., Inc.*, 239 Conn. 93, 99 (1996).

Simply put, the defendants are immune from suit by the plaintiffs in the Superior Court unless one of the three exceptions to sovereign immunity has been demonstrated by the plaintiffs. *See C.R. Klewin N.E., LLC v. Fleming*, 284 Conn. 250, 258–59 (2007) (explaining that once the state has asserted a sovereign immunity defense, plaintiff bears the burden of establishing that sovereign immunity is inapplicable.)

The three exceptions are:

> (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity ... (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights ... and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority....

Morneau v. State, 150 Conn. App. 237, 247 (2014).

None of the exceptions to sovereign immunity apply to the plaintiffs' claims.

A. The State has not Waived Sovereign Immunity

First, the plaintiffs have not identified – and cannot identify – that the legislature has "statutorily waive[d]" sovereign immunity with respect to their claims. *Id.* The regulation at the heart of plaintiffs' claims, *see supra,* was promulgated within the executive branch and therefore cannot constitute the express legislative action necessary to constitute a waiver.[3] *See* Conn. Gen. Stat. §§ 4-168 et seq. (explaining how state agency regulations are promulgated).

B. Plaintiffs Have Failed to Adequately Plead an Equal Protection Violation

The second exception to sovereign immunity occurs "when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights." *Morneau,* 150 Conn. App. at 247. "For a claim made pursuant to the second exception, complaining of unconstitutional acts, we require that the allegations of such a complaint and the factual underpinnings if placed in issue, must clearly demonstrate an incursion upon constitutionally protected interests." *Columbia Air Servs., Inc. v. Dep't of Transp.*, 293 Conn. 342, 349–50 (2009)(internal quotation marks and citation omitted).

Counts one and five of the amended motion on their face do not establish constitutional claims and therefore on their face this exception does not apply. Count one asserts a violation of a regulation and Count five is a common law claim for which there is simply no sovereign immunity exception. Counts two, three and four of plaintiffs' amended motion for declaratory judgment allege violations of the federal and state equal protection clauses. The gravamen of plaintiffs' equal protection argument is that by posting the vaccination *rates* at A.F.'s school the "confidential, legally-protected immunization information" of students with a vaccination

[3] The plaintiffs' claim – without support – that the regulation "was adopted by the legislature." Doc. 103 at 6. Agency regulations are not adopted by the Connecticut General Assembly.

exemption "was released to the public, whereas the immunization of the students who do not utilize an exemption was not released, and so remained protected." Doc. 106 at 3-4.

"A violation of equal protection by selective [treatment] arises if: (1) the person, compared with others similarly situated, was selectively treated; and (2) ... such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." *Columbia*, 293 Conn. at 362. Plaintiffs have failed to allege facts supporting an equal protection violation.

First, plaintiffs allege that the percentages of *both categories* of students (exempt and non-exempt) were released by the Commissioner at the same time. Doc. 106 at 3. Plaintiffs' claims of different treatment of vaccinated and unvaccinated students are therefore false on its face.

Second, the information that the Defendant made public in no way provided information sufficient to identify which category A.F. belonged. Finally, plaintiffs do not allege nor is there a claim of an impermissible consideration or intent to injure in the disclosure.

Plaintiffs' amended motion therefore lacks the factual underpinnings necessary to demonstrate an equal protection violation. Accordingly, the second exception to sovereign immunity is inapplicable.

C. Plaintiffs Have Failed to Allege Wrongful Conduct to Promote an Illegal Purpose in Excess of the Commission's Statutory Authority

The third exception to sovereign immunity occurs "when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority...." *Morneau*, 150 Conn. App. at 247.

Assuming arguendo that the Commissioner's disclosure of school level data violated the regulation cited by the plaintiffs, the disclosure could not be in excess of the Commissioner's *statutory authority* because a statute, Connecticut General Statutes § 1-210(a), does not permit the Commissioner to withhold public records by DPH based upon a mere regulation. Section 1-210(a) provides:

> (a) Except as otherwise provided by any federal law *or state statute*, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. *Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.*

(emphasis added). If DPH had refused a freedom of information request solely relying on the regulation invoked by the plaintiffs, DPH would have violated its statutory obligations under the Freedom of Information Act.

Furthermore, as explained above, the Commissioner has been tasked under Connecticut law with specific authority and discretion to prevent disease. Connecticut General Statute § 19a-2a. The Commissioner is further instructed to "compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them." Connecticut General Statute § 19a-2a(8). Accordingly it cannot be said that in disclosing vaccination rates constitutes "wrongful conduct to promote an illegal purpose."

Because the plaintiffs have failed to plead a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the Commissioner's statutory authority this exception is unavailable.

III. The Defendant's Conduct Has Not Injured the Plaintiffs and Plaintiffs Therefore Lack Standing

As explained *supra* the data made publicly available by the Commissioner did not identify plaintiff A.F. or disclose his vaccination status. In fact, the only reason that the public is aware of A.F.'s vaccination status is as a result of the pleadings filed by plaintiffs in this legal action. Furthermore, any "hateful and vitriolic" statements made toward the plaintiffs were made by third parties and not in any way condoned or attributable to the Defendant.

In order to have standing a plaintiff must "demonstrate a specific, personal and legal interest in the subject matter of the controversy *and that the [defendant's] conduct has specially and injuriously affected that specific personal or legal interest*." *Andross v. W. Hartford*, 285 Conn. 309, 323 (2008)(emphasis added). The "irreducible constitutional minimum of standing" requires that the plaintiff has suffered an injury in fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The U.S. Supreme Court has defined injury-in-fact as an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. *Id*. Second, a causal connection between the plaintiff's alleged injury and the defendant's actions must exist. *Id*. at 560-61. Third, it must be likely, as opposed to merely speculative, that the plaintiff's injury will be redressed by a favorable decision from the court. *Id*. [4]

There is no causal connection between DPH and the direct threats to plaintiffs. The plaintiffs concede that direct threats to them were not made by DPH and were the result of the plaintiffs publicly identifying themselves in the pleadings in this case. Doc. 106 at 6-7; *See Bennett v. Spear*, 520 U.S. 154, 167 (1997) ("[T]he injury must be fairly traceable to the

[4] The Connecticut Supreme Court has stated that "[t]here is little material difference between what we have required and what the United States Supreme Court in ***Lujan*** demanded of the plaintiff to establish standing." *Gay & Lesbian Law Students Assn. v. Board of Trustees*, 236 Conn. 453, 466 n. 10, 673 A.2d 484 (1996).

challenged action of the defendant, and not the result of the independent action of some third party not before the court.”). Furthermore, it is not likely that the injury of which plaintiffs complain will be redressed by a favorable decision because the information regarding the plaintiffs and A.F. are in the public record of the court and the CHRO[5] and media resulting from their filings. No injunction against DPH can remove that information from the public domain.

Conclusion

For the foregoing reasons the plaintiffs' "Amended Motion for Declaratory Judgment" should be DISMISSED.

CONNECTICUT DEPARTMENT OF PUBLIC HEALTH
DEFENDANT

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[5] In May 2019 the plaintiffs also filed a complaint with the Commission on Human Rights and Opportunities regarding these issues.

CERTIFICATION

I hereby certify that the foregoing complies with the requirements of Practice Book§ 4-7 and a copy was mailed, U.S. Mail, postage prepaid, or electronically delivered pursuant to Practice Book § 10-13 to all counsel and pro se parties of record who have given written consent for electronic delivery, on the 11th day of July, 2019, as follows:

/s/ Darren P. Cunningham
Assistant Attorney General